

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SALIA ISSA, FISTON RUKENGEZA, *et al.*
Plaintiffs,

v.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
et al.
Defendants.

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CIVIL ACTION NO. 1:22-cv-1107

DEFENDANTS' UNOPPOSED MOTION FOR EXTENSION OF TIME ON DEFENDANTS' ANSWER

TO THE HONORABLE DISTRICT COURT JUDGE:

Defendants Texas Department of Criminal Justice ("TDCJ"), Brandy Hooper, Desmond Thompson, and Alonzo Hammond (collectively, "Defendants") respectfully ask the Court for a two-week extension on their deadline to answer Plaintiffs' Second Amended Complaint. Plaintiffs do not oppose the request. In further support, Defendants show the Court as follows:

I. PERTINENT PROCEDURAL HISTORY

Plaintiffs' Second Amended Complaint raises 31 claims by three plaintiffs against four defendants. Dkt. #18 at 2–3. On August 18, 2023, the Court entered an order "DISMISS[ING] Plaintiffs' Texas Labor Code claims against TDCJ for lack of jurisdiction under Rule 12(b)(1) without prejudice[;] DISMISS[ING] Plaintiffs' Title VII and Rehabilitation Act hostile work environment claims against TDCJ under Rule 12(b)(6) with prejudice[;]" and "DISMISS[ING] under Rule 12(b)(6) with prejudice Plaintiffs' (1) substantive due process claims for bodily integrity, right to be a parent, and right to life, and (2) equal protection claim based on a hostile work environment, against the Individual Defendants." Dkt. #39 at 2–3. The order "DENIE[D] TDCJ's Motion to Dismiss Plaintiffs' disparate treatment and disparate impact claims under Title

VII and the Rehabilitation Act and Plaintiffs' claims under the FMLA;" and "DENIE[D] the Individual Defendants' Motion to Dismiss Plaintiffs' equal protection claims for sex-based disparate treatment and impact." *Id.*

Under the Federal Rules of Civil Procedure, Defendants' current answer deadline is set for 14 days after receiving notice of the court's order. *See* FED. R. CIV. P. 12(a)(4)(A). Although the order is dated August 18, 2023, the transaction was entered on August 21, 2023, which is when the Notice of Electronic Filing was sent:

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Western District of Texas

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The following transaction was entered on 8/21/2023 at 9:07 AM CDT and filed on 8/18/2023

Case Name: Issa et al v. Texas Department of Criminal Justice et al

Case Number: [1:22-cv-01107-ADA](#)

Filer:

Document Number: [39](#)

Docket Text:

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION.
Signed by Judge Alan D Albright. (pg)**

1:22-cv-01107-ADA Notice has been electronically mailed to:

Benjamin L. Dower benjamin.dower@oag.texas.gov, deborah.woltersdorf@oag.texas.gov

Ross A. Brennan ross@cronauerlaw.com, service@cronauerlaw.com

Therefore, at present, Defendants' answer deadline is set for 14 days from August 21, 2023, or September 4, 2023. *Compare supra, with* FED. R. CIV. P. 12(a)(4)(A).

II. STANDARD OF REVIEW

“When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion if . . . a request is made before[] the original time or its extension expires.” FED. R. CIV. P. 6(b)(1). “Rule 6(b)(1)(A) gives the court wide discretion to grant a request for additional time that is made prior to the expiration of the period originally prescribed or prior to the expiration of the period as extended by a previous order.” Charles Alan Wright & Arthur R. Miller, 4B FED. PRAC. & PROC. CIV. § 1165 (4th ed. April 2017). “[A]n application for extension of time under Rule 6(b)(1)(A) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.” *Id.*

III. ARGUMENTS & AUTHORITIES

Defendants respectfully ask the Court to grant them an additional two weeks to file their answer to the remaining claims in Plaintiffs’ Second Amended Complaint. The Second Amended Complaint is 32 pages and contains 262 numbered paragraphs. To answer appropriately and with the requisite specificity will take time. Additionally, undersigned counsel has other litigation-related responsibilities between now and September 4, 2023, that include—but are no means limited to—the following:

- A reply in support of a pending motion for summary judgment due August 25, 2023, in *Blackmon v. Texas Department of Criminal Justice*, Civ. A. No. 9:22-cv-182, in the U.S. District Court for the Eastern District of Texas, Lufkin Division;
- A reply in support of a pending motion for summary judgment due August 28, 2023, in *Perkins v. Townsend*, Civ. A. No. 4:21-cv-03962, in the U.S. District Court for the Southern District of Texas, Houston Division;
- Pre-trial obligations (including exchanging a proposed jury charge and draft Motions in Limine) due August 31, 2023, with additional pre-trial filing obligations in the following days, in *Simpson*

v. Cisneros, Civ. A. No. 6:20-cv-00716, in the U.S. District Court for the Western District of Texas, Waco Division;¹

- A status conference set for August 31, 2023, in *Cole v. Collier*, Civ A. No. 4:14-cv-1698; in the U.S. District Court for the Southern District of Texas, Houston Division; and
- An appellate brief due on August 31, 2023, in *White v. Ponder*, No. 22-40436, in the U.S. Court of Appeals for the Fifth Circuit.

Defendants submit that these litigation obligations (which only include the matters due *before* September 4, 2023, not the matters due in the days and weeks thereafter) constitute good cause for the two-week extension requested. Defendants have acted in good faith and a two-week delay on Defendants' answer will not impose any prejudice on Plaintiffs. Defendants further note that Plaintiffs are unopposed.

IV. PRAYER

For all these reasons, Defendants respectfully ask the Court to grant a two-week extension on Defendants' answer deadline, setting the answer deadline for September 18, 2023.

Date: August 23, 2023

Respectfully Submitted,

ANGELA COLMENERO
Provisional Attorney General of Texas

/s/ Benjamin L. Dower
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¹ In the interest of full candor to the tribunal, the defendant has filed an unopposed motion for continuance in this case that would—if granted—reset the pre-trial filing deadlines. But at present the motion has not been granted.

SHANNA MOLINARE
Chief, Law Enforcement Defense Division

ATTORNEYS FOR DEFENDANTS TDCJ,
HOOPER, THOMPSON, AND HAMMOND

CERTIFICATE OF CONFERENCE

I, BENJAMIN L. DOWER, certify that on August 23, 2023, I emailed Mr. Ross Brennan, counsel for Plaintiffs, to inquire regarding his opposition status to the motion. Mr. Brennan indicated that he was unopposed to the two-week extension requested in this motion.

/s/ Benjamin L. Dower

BENJAMIN L. DOWER
Special Litigation Counsel
Office of the Attorney General of Texas

CERTIFICATE OF SERVICE

I, BENJAMIN L. DOWER, certify that a true and correct copy of the foregoing document was filed and served via the Court's CM/ECF document filing system on August 23, 2023, to:

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